

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

74-2690

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

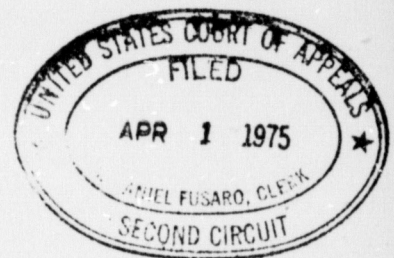
STATE OF CONNECTICUT,
COMMISSIONER OF FINANCE AND CONTROL

Plaintiff-Appellant

v.

LEONARD CRISP

Defendant-Appellee



ON APPEAL FROM A DECISION OF THE
UNITED STATES DISTRICT COURT,
DISTRICT OF CONNECTICUT

BRIEF OF APPELLANT

Carl R. Ajello
Attorney General
30 Trinity Street
Hartford, Connecticut

Edward F. Pasiecznik
Assistant Attorney General
90 Brainard Road
Hartford, Connecticut

1

TABLE OF CONTENTS	Page
ISSUES PRESENTED	1
STATEMENT OF THE CASE	2
ARGUMENT	6
I. The Claim of the State of Connecticut Based Upon Section 17-295 of the Con- necticut General Statutes is Not Prov- able Under the Bankruptcy Act.	6
II. The Claim of the State of Connecticut Based Upon Section 17-295 of the Gene- ral Statutes of Connecticut, Cannot Be Discharged By The Bankruptcy Court, Without Permission of the Sovereign State of Connecticut	17
III. The Eleventh Amendment of the United States Constitution Prohibits the Bankruptcy Court From Discharging The Claim of the State of Connecticut	19
CONCLUSION	24

TABLE OF CITATIONS

Page

Federal Cases Cited:

In re Dixie Splint Coal Co., 308 U.S. 295, 60 S.Ct. 238 (1938)	13
Edelman v. Jordan, 415 U.S. 651, 94 S.Ct. 347, 39 L.Ed.2d. 662	19, 23
Matter of Long and Smith, 95 F.2d. 525, (2nd Cir. 1938)	13
Palmer v. Ohio, 248 U.S. 32, 39 S.Ct. 16, 63 L.Ed 108	20
Parden v. Terminal R. Co., 377 U.S. 184	9
Thompson v. England, 226 F.2d 488	17

State Cases Cited:

State v. Dickerson, 4 Conn. Cir. Ct. 81	13, 15
State v. Metrusky, 140 Conn. 26	10, 13, 14
State v. Murzyn, 142 Conn. 329	9, 13, 14
State v. Romme, 93 Conn. 571	10, 13, 22
State v. Shelton, 47 Conn. 400	8, 23

Federal Statutes Cited

11 U.S.C. 35 (Bankruptcy Act, Section 17)	6, 8
11 U.S.C. 103 (Bankruptcy Act, Section 63)	10, 14, 16
11 U.S.C.A. 103 (a)(8)	16, 17

State Statutes Cited

Section 3- 7	17
Section 17- 83 (e)	12
Section 17- 83 (g)	12
Section 17-295	1, 3, 6, 7, 12, 16, 17, 18
Section 17-295 b	12
Section 17-295 (b)	10, 11
Section 17-295 (c)	11
Section 17-295 (g)	11
Section 52-576	11

United States Constitution Cited

Article I Sec 8, Cl. 4	8, 19
Eleventh Amendment	1, 8, 9, 18, 19, 21, 23

Other Authorities Cited

Local Rules of Procedure, R.10 (a)(2)	4, 7
States, Etc. 72 Am Jur 2d 490	20

ISSUES PRESENTED

1. Whether the claim of the State of Connecticut based upon Section 17-295 of the Connecticut General Statutes is provable under the Bankruptcy Act:

2. Whether the claim of the State of Connecticut based upon Section 17-295 of the Connecticut General Statutes can be discharged without permission of the sovereign State of Connecticut?

3. Whether the Eleventh Amendment to the United States Constitution prohibits the Bankruptcy Court from discharging the claim of the State of Connecticut?

STATEMENT OF THE CASE

Leonard Crisp filed a petition March 8, 1974, as a bankrupt seeking discharge of his listed debts pursuant to the Bankruptcy Act in the United States District Court, District of Connecticut.

The Bankruptcy Judge, Saul Seidman, by order dated March 14, 1974, provided April 30, 1974, as the last day for filing objections to discharge. On May 13, 1974, Judge Seidman extended the time to file objection to discharge to the State of Connecticut, Department of Finance and Control, until May 24, 1974. *App. p. 10.*

On or about May 21, 1974, the State of Connecticut filed its objection together with the filing fee of \$15.00

On or about May 21, 1974, Judge Seidman advised the State of Connecticut that the hearing date for its objection to discharge was scheduled for June 27, 1974, and to bring a check for \$33.00 to the hearing. *App. p. 14.*

On or about June 4, 1974, Judge Seidman issued an order discharging Leonard Crisp as bankrupt, from the claim of the State of Connecticut, without a hearing upon the State's objection to discharge. *App. p.p. 16, 17.*

On or about June 10, 1974, Judge Seidman reassigned the hearing scheduled for June 27, 1974, to July 18, 1974 at 10 o'clock. *App. p. 18.*

The claim of the State of Connecticut against Leonard Crisp is for care furnished him at a state maintained humane institution, Norwich Hospital, pursuant to Section 17-295 of the General Statutes of the State of Connecticut at a rate less than per capita costs. *App. p. 12.*

Leonard Crisp filed a petition in the United States Bankruptcy Court, United States District Court, District of Connecticut, seeking to be discharged from his obligation to pay the State of Connecticut \$1,623.65, as the amount billed him for the care furnished him.

The State of Connecticut, acting through its Commissioner of Finance and Control, filed its objection to the State's claim being discharged. *App. p.p. 5-9, 11, 12.*

The petitioner, Leonard Crisp, filed a Motion to Dismiss the Objection to Discharge, but failed to file his brief as required by Local Rules of Procedure R.10 (a)(2); and was permitted to file his brief subsequent to the date of argument. *App. p. 19.*

The issues raised in the brief contest the rights of the State as sovereign to recover its claim against Leonard Crisp.

The Bankruptcy Court by Memorandum and Order dated August 15, 1974, entered a discharge of the claim of the State of Connecticut, without a hearing on its objection to discharge. *App. p.p. 23-36.*

The State of Connecticut filed its appeal of the Bankruptcy Court's discharge of the defendant, Leonard

Crisp, to the District Court, and the Court ruled that the Petition for Review be denied and dismissed for the same reasons set forth in the Memorandum and Order of the Bankruptcy Judge filed August 15, 1974; and further ordered that the Order of the Bankruptcy Judge be confirmed. *App. p.p. 61, 62.*

The denial of the Petition for Review is appealed to the United States Court of Appeals for the Second Circuit.

ARGUMENT

I

THE CLAIM OF THE STATE OF CONNECTICUT BASED UPON SECTION 17-295 OF THE CONNECTICUT GENERAL STATUTES IS NOT PROVABLE UNDER THE BANKRUPTCY ACT.

The Bankruptcy Act provides a person who meets the requirements of the Act with the means to have the Bankruptcy Court discharge all debts which are allowable and provable. Section 17 Bankruptcy Act, 11 U.S.C. 35.

Leonard Crisp seeks to have the Bankruptcy Court apply its discharge of debt authority to the claim of the State of Connecticut for care furnished him in a state maintained humane institution. The Bankruptcy Court did grant him a discharge from the state's claim on two occasions, over the objection of the state to said discharge.

The Court acted in summary fashion after reviewing the petition of Leonard Crisp and the claim of the State of Connecticut, June 4, 1974, granting the first discharge, although there was a hearing date scheduled by the Court to hear the state's objection to discharge. The hearing was scheduled for July 18, 1974, but the Court acted upon Leonard Crisp's Motion to Dismiss the Objection to Discharge, which had been dated July 2, 1974, and filed with the Court without the brief required by Local Rules of Procedure R.10(a)(2). The Court accepted an exhibit indicating per capita costs were greater than the daily rate Leonard Crisp was billed, but misunderstood the statutory authority and held the state's claim limited to \$1,623.65, when it granted its second discharge August 15, 1974. Both discharges were granted without a hearing being held on the state's objection to discharge. *App. p.p. 16, 23-36.*

The Appellee was billed pursuant to Section 17-295 of the General Statutes of Connecticut. He was treated as

an indigent prior to his qualifying for Social Security Disability Benefits in November, 1970.

The Courts' recognized that the state had a right as sovereign which rights as creditor could not be affected by a discharge in bankruptcy, State v. Shelton, 47 Conn. 400, 1879, prior to amendment of Section 17 of the Bankruptcy Act.

The state's right as sovereign cannot be defeated by the Bankruptcy Act. The Congress has broad powers under Article I, Sec. 8 Cl. 4 of the United States Constitution, but it cannot provide the Bankruptcy Court with authority to permit a citizen to sue the state without its consent.

The Eleventh Amendment of the United States Constitution provides:

"The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

The United States Supreme Court recognized that an unconsenting state is immune from federal court suits brought by its own citizens as well as by citizens of another state, although the Eleventh Amendment is not in the applicable terms. Parden v. Terminal R. Co., 377 U.S. 184, 186.

The Connecticut Supreme Court in State v. Murzyn, 142 Conn. 329, avoided the constitutional question regarding the right of the state as sovereign to have its claim discharged in Bankruptcy by its holding that the fact that the state may re-evaluate the amount billed a person for care furnished a patient in a state humane institution, prevents the claim of the state from being provable.

The Bankruptcy Court sought to establish a contrary position to the Connecticut Supreme Court by alluding to the language of the Bankruptcy Act related to contracts and open accounts. *App. p.p. 32-35.*

It has long been recognized in Connecticut, that "the state, in making expenditures for care and support of an insane person committed to an institution designed to provide the support and attention which he needs, enters into no contract relation with that person. It simply acts of its own volition, in response to the dictates of humanity, in the performance of a governmental duty now recognized as resting upon a modern State and for the good of the individual concerned." State v. Romme, 93 Conn. 571, 573, 574.

The Bankruptcy Court may discharge Leonard Crisp from the debts or claims other than the State of Connecticut's claim, as the state's claim is not limited to the amount sought by its proof of claim, State v. Metrusky, 140 Conn. 26, 30, and is dependent upon the future assets of Leonard Crisp. Sections 17-295 (g) and 17-295 (b) of the General Statutes of Connecticut. The claim of the State of Connecticut is not provable within the meaning of Section 63 of the Bankruptcy Act, as the amount Leonard Crisp or his estate is liable for reimbursement is uncertain in amount and obligation.

"The maximum rate to be charged for support of each patient for the ensuing year shall be the per capita costs..." Section 17-295 (b) of the Connecticut General Statutes.

"Each patient...shall be legally liable from the date of admission for the support of such patient in such institution in accordance with his ability to pay...provided the total billing to all persons responsible for the support of any patient shall not exceed the total charges." Section 17-295 (c) of the Connecticut General Statutes.

"The receipt of a lesser rate than the billed charges shall not bar the commissioner from recovering from any liable person or his estate, including the patient or his estate the balance remaining unpaid, provided the limitation of action provided in Section 52-576 shall apply to such recovery." Section 17-295 (g) of the Connecticut General Statutes.

"A patient who is receiving or has received care in a state humane institution, his estate or both shall be

liable to reimburse the state for any unpaid portion of per capita cost to the same extent as the liability of a public assistance beneficiary under Sections 17-83 (e) and 17-83 (g), subject to the same protection of a surviving spouse or dependent child as is therein provided." Section 17-295 b of the General Statutes of Connecticut.

The obligation to repay the state for care furnished Leonard Crisp at a state maintained humane institution is established by Section 17-295 of the Connecticut General Statutes.

Leonard Crisp has a statutory obligation to repay the state for his care in a humane institution.

This obligation, being set according to his ability to pay, and capable of being retroactively billed and of being increased or decreased at any time, is too uncertain to qualify as a provable debt under the Bankruptcy Act.

Where the claim is based upon the future success of the debtor, the claim is contingent and unprovable in

Bankruptcy. In re Dixie Splint Coal Co., 308 U.S. 295, 60 S.Ct. 238, (1938), Matter of Long and Smith, 95 F.2d 525 (2d Cir. 1938)

In both these cases, the contingency upon which the creditor would collect was the financial success of the business. In the present matter, the amount the state, by statute, may recover from Leonard Crisp is determined upon his successful ability to pay. *App. p. 48.*

The State of Connecticut has not terminated its authority to obtain per capita costs from a patient or his estate or a legally liable relative or his estate contrary to the Bankruptcy Court's position in its Memorandum and Order. See State v. Romme, 93 Conn. 571, State v. Metrusky, 140 Conn. 26, State v. Murzyn, 142 Conn. 329 and State v. Dickenson, 4 Conn. Cir. Ct. 81.

In State v. Romme, *supra*, the court held that the state could recover from the decedent estate of a patient committed to a humane institution the cost of care al-

though the amount sought was in addition to the amount billed the conservator.

In State v. Metrusky, supra, the court held the state was not estopped to recover a greater amount than billed from the estate of the mother for supporting her son in a state maintained institution for the mentally ill, even though the commissioner of welfare stated that it had paid the account through a certain date at a billed rate. The court also indicated that the actual cost of care may be less than the per capita cost, which would limit the maximum to actual costs rather than per capita costs.

Our State Supreme Court in State v. Murzyn, 142 Conn. 329, 333-334, held that the obligation of a father to reimburse the state for support of his son in a state humane institution was not a debt founded on "a fixed liability...absolutely owing" within the meaning of the Bankruptcy Act, 11 U.S.C. Section 103. It recognized the right of the state to reopen the court's order of support

for the balance of per capita costs remaining unpaid, or such portion thereof as the court finds to be reasonably commensurate with the financial ability and the number and conditions of other dependent upon him.

In State v. Dickenson, 4 Conn. Cir. Ct. 81 (1966) the conservator of the estate of a veteran in a state humane institution was held liable to pay increased charges which were assessed when the estate received an award which increased its ability to pay. The Court stated that the statute contemplates that the authorized billing by the commissioner may be retroactive.

The State of Connecticut is seeking reimbursement for its expenditures for patients in humane institutions, and is not a creditor seeking recovery of a contract obligation. It does not require reimbursement for total costs regardless of the hardship, but must consider the ability to pay of the patient. Since the ability of Leonard Crisp to pay is fluid and contingent, the claim of the state is also fluid and contingent depending upon the uncertain future of Leonard Crisp's success.

Leonard Crisp was charged at a rate less than per capita costs so that the State of Connecticut has, by Section 17-295 of the Connecticut General Statutes, authority to recover a greater amount up to but not exceeding the per capita costs. *App. p.p. 48, 49.*

In order to have the state's claim against Leonard Crisp discharged in bankruptcy, it must be fixed and absolutely owing. 11 U.S.C. Section 103. The authority to rebill the patient at a greater rate establishes a contingency which may or may not occur. Since the maximum billing is per capita costs and the billing for patient care at a state maintained humane institution is based upon his ability to pay, any billing for a lesser amount does not fix the liability as a provable debt unless per capita costs were billed.

The state does not control the contingency to fix the debt is sufficient to support its contention that the debt is not provable under Section 63 (a) (8), 11 U.S.C.A. 103 (a) (8).

"Where any contingent or unliquidated claim has been proved, but, as provided in subdivision (d) of Section 93 [Section 57 of Bankruptcy Act] of this title, has not been allowed, such claim shall not be deemed provable under this title." Section 63 (d), 11 U.S.C.A. 103 (d) [Bracket information added]

The claim of the state does not qualify as a provable debt, because it is not allowable. Thompson v. England, 226 F.2d 488.

II

THE CLAIM OF THE STATE OF CONNECTICUT BASED UPON SECTION 17-295 OF THE GENERAL STATUTES OF CONNECTICUT, CANNOT BE DISCHARGED BY THE BANKRUPTCY COURT, WITHOUT PERMISSION OF THE SOVEREIGN STATE OF CONNECTICUT.

The Governor of the State of Connecticut "...may authorize the cancellation upon the books of any state department of any uncollectible claim due such department..."
Section 3-7 of the Connecticut General Statutes.

The State of Connecticut, in providing care for Leonard Crisp in the state maintained humane institution acts in its sovereign capacity.

In seeking reimbursement for care furnished Leonard Crisp, the Appellant, Commissioner of Finance and Control, sought to carry on the duties for the sovereign State of Connecticut.

Leonard Crisp was billed by the Appellant pursuant to Section 17-295 of the Connecticut General Statutes for care furnished him by the State of Connecticut at Norwich Hospital, a state maintained humane institution.

He has not been granted permission by the State of Connecticut to have its claim discharged in the Federal Bankruptcy Court. The failure to receive permission from the State of Connecticut bars his being discharged of the state's claim.

The Eleventh Amendment of the United States protects the sovereign rights of the State of Connecticut and limits

the authority of the Bankruptcy Court so that any discharge of the state's claim pursuant to Section 17-295 is null and void, where there is no proof that permission to institute the bankruptcy proceeding was granted by the state. Edelman v. Jordan, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662.

III

THE ELEVENTH AMENDMENT OF THE UNITED STATES CONSTITUTION PROHIBITS THE BANKRUPTCY COURT FROM DISCHARGING THE CLAIM OF THE STATE OF CONNECTICUT.

The Congress of the United States can under Article I, Sec. 8 Cl. 4 of the United States Constitution pass uniform laws of bankruptcy.

While the Congress may permit Federal debts and taxes to be discharged in bankruptcy, it cannot avoid the prohibition of the Eleventh Amendment regarding the claims due the state as sovereign.

"The general principle of jurisprudence that the sovereign cannot be sued without its own consent applies with full force to the several states of the Union. Accordingly no suit, whether at law or in equity, is maintainable against the state either in its own courts or in the courts of a sister state, by its own citizens... unless the state has given its consent or otherwise waived its immunity. The state's immunity from suit without its consent is absolute and unqualified, and a constitutional provision securing it is not to be so construed as to place the state within the reach of process of the court." *States, Etc.* 72 Am Jur 2d 490, 491.

The right of individuals to sue a state in either a federal or state court cannot be derived from the Constitution or laws of the United States, but can come only from the consent of the state. Palmer v. Ohio, 248 U.S. 32, 63 L.Ed. 108, 39 S.Ct. 16.

Since Leonard Crisp did not receive permission to sue the State of Connecticut in Bankruptcy Court, the court is without authority to impose the Bankruptcy Act upon the

claim the State of Connecticut has against him. The claim of the State of Connecticut cannot be discharged by the Bankruptcy Court, because Leonard Crisp did not have permission to sue.

The State of Connecticut has not waived its sovereign immunity by entering a claim against Leonard Crisp in the Bankruptcy Court. The purpose of putting the claim before the Bankruptcy Court was to object to the discharge of the claim against Leonard Crisp. Should the court consider the presentation as submission by the State to the jurisdiction of the Bankruptcy Court, the court would be ignoring the purpose of the claim.

The Eleventh Amendment of the United States came into being, because of the failure of the Federal Courts to recognize the sovereign right of the state to protect its purse. In the present case, the State of Connecticut is seeking to protect its purse by objecting to the discharge of its claim against Leonard Crisp.

A great deal of emphasis was placed upon the claim arising out of a contract action and as such should be treated as severable and fixed although contingent as to the total amount due. This would supposedly support the view that the debt although contingent was fixed sufficiently to be dischargeable under the Bankruptcy Act. What is ignored in considering the claim of the state as one in contract, is the obligation of the parties being governed by legislative grant. The act of charity is not contractual as the terms are not accepted by the recipient of the charity, but imposed by legislative fiat which is permitted the state as sovereign. State v. Romme, supra.

The merit of Leonard Crisp's cause leading to the discharge of claims against him by the Bankruptcy Court, does not expand the court's power, to permit the right of the State of Connecticut as sovereign to be ignored.

In order to avoid the bar of sovereign immunity, Leonard Crisp must prove that the State of Connecticut

granted him permission to present its claim for discharge to the Bankruptcy Court. There is no showing in the record that permission was granted.

The Eleventh Amendment bars the discharge, the same as it did prior to the amendment to the Bankruptcy Act. State v. Shelton, supra. Any judicial determination which affects the claim of the sovereign state is an unconstitutional expansion of the federal judicial power.

Stare decisis does not control when the constitutional issue is to be decided. Edelman v. Jordan, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662. The right of the state to protect its purse is not to be ignored or taken lightly.

CONCLUSION

The Appellant respectfully requests that the Judgment of the District Court be reversed.

Respectfully submitted,

Edward F. Pasiecznik

Edward F. Pasiecznik
Assistant Attorney General
90 Brainard Road
Hartford, Connecticut 06114

CERTIFICATION

I hereby certify that two copies of the foregoing Brief of Appellant were hand delivered on the 12th day of March, 1975, to the following counsel of record:

Kataline Roth, Esq.
Legal Clinic
School of Law
University of Connecticut
Greater Hartford Campus
West Hartford, Connecticut 06117

Edward F. Pasiecznik

Edward F. Pasiecznik
Assistant Attorney General

Attorney for Appellant

